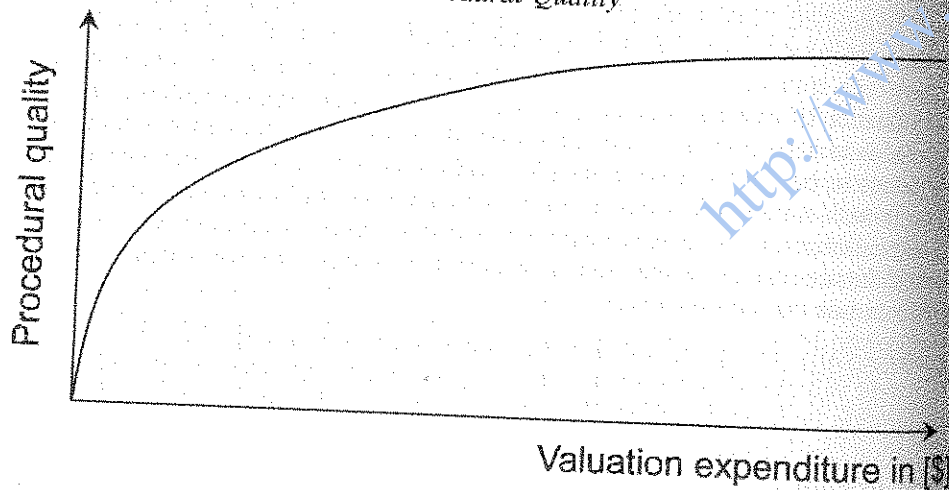


can be achieved. Hardly the most important information can be collected or documents can be reviewed. With sufficient care and systematic work, however, the most important information can be collected relatively fast, and the valuator will rapidly have the necessary overview of the circumstances to be valued. This phase corresponds to the steep part of the curve (Figure 2.38). Subsequently, the valuator will fulfill his duty of care and will consider supplementing information and carry out, possibly correction calculations with other approaches (Sec. 2.4.2) or procedures (Chpt. 4.1). This phase corresponds to the range of the largest curvature of the curve (Figure 2.38). Subsequently, still a great many further references, indications, background information and considerations can matter and be worked on. However, this usually will not substantially affect any more the procedural quality, because with respect to the problem in principle—the uncertainty of the future and thus future economic success from the ownership of the patent (Mno. 371)—no more substantial knowledge is derivable from the additional expenditure. This phase corresponds to the flat area of the curve (Figure 2.38).

433 The practical consequence from the feasibility principle is the as efficient as possible proceeding of the valuator in the valuation, thus the as efficient as possible use of the expenditure which is available for valuation. In order to ensure this and to ensure the bases for the fulfilment of all above principles at the same time, a procedure in altogether ten steps is described in Chpt. 3.

Figure 2.38. Connection between Valuation Expenditure and Attainable Procedural Quality



Chapter 3 Valuation Proceeding

The value of achievement lies in the achieving.

Albert Einstein

In Chpt. 1 “Economic Importance of Patents” and Chpt. 2 “Basics of the Patent Evaluation,” all substantial aspects, which are necessary to understand the concrete proceeding in the valuation of patents, are explained. Those are particularly from Chpt. 1 the economic and legal characteristics of patents as well as from Chpt. 2 the basics and definitions of the economic value and the determination of this value by valuation. In this third chapter, these fundamental aspects are consolidated into an application pattern that comprises altogether ten individual steps. In Chpt. 5, this application pattern is applied to patent valuation on five examples of concrete valuation requests and valuation cases. The first part of the application pattern is the analysis of the valuation situation in four steps. The second part of the application pattern consists of six further steps for setting up a valuation model including the use of valuation procedures, as they are described in detail in Sec. 4.1.

The most important arguments in this introduction to the valuation proceeding are:

- | | | |
|--|--------|---|
| | Mno. | 2 |
| - The explanations in this chapter develop on the findings of chapters 1 and 2: Value and valuation are context dependent. | Mno. 3 | |
| - This context consists of two parts: The context of the valuation situation and thus the context of the valuation as well as the context of the value and thus the value determination. | Mno. 5 | |
| - The context of the valuation situation refers to the questions of the valuation cause, the role of the valuator and the addressee of the value information. | Mno. 6 | |

- The context of the value determination refers to the questions of Mno. 7 the valuation subject matter, the decision situation to be analyzed and the appropriate value concept.

3 In Chpt. 2 Mno. 16, it is described in detail that a context-free, always valid, often also called objective economic value is not determinable because it does not exist. From this fact, the consequences are derived which are described in the summary Value and valuating, Sec. 2.1.11.

In a sentence, this summary can be abstracted into the statement:

The valuator must understand the cause of the valuation as well as his role in the valuation process *before* he starts with the application of valuation approaches (Chpt. 2.4) and procedures (Chpt. 4.1).

4 Unfortunately, this *pre*-understanding of the valuation situation often goes too short in the available literature. However, by focusing on the complex details of the application of approaches and procedures, a beginner, and sometimes also the more experienced valuator, loses the fundamental overview of the valuation situation. Exceptions are, for example, the outstanding monographs of *Russel/Parr* which explicitly refer to it: "value does not exist in the abstract and must be addressed within the context of time, place, potential owners, and potential uses"¹ and *Anson/Suchy* who likewise explicitly address this topic: "one can decide which valuation method is most appropriate, one must first decide in what context assets or bundles of assets are being valued."²

5 The question is, which "context" is meant here? The context meant here is split. On the one hand, it is that of valuating, and on the other hand, it is that of value. The first includes valuating as a process, as an activity, as a service. The latter refers to the subject matter that is to be valued. The first context concerns thus the valuation situation in which the valuation takes place; the second concerns the value determination as such. To the distinction of these two contexts an example:

Example:

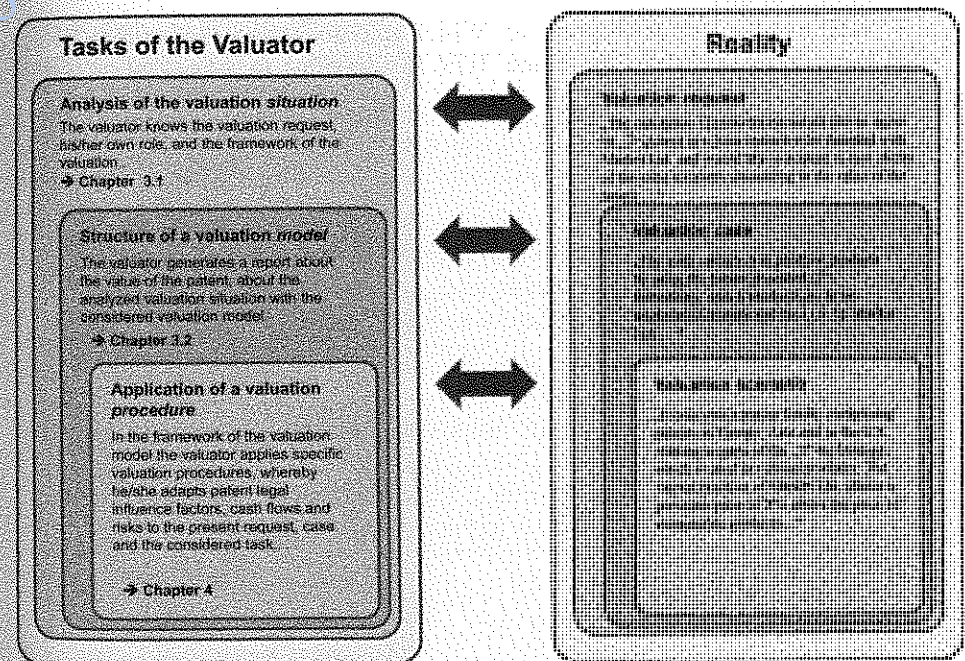
A valuation expert is asked by an investment company to value a patent. The cause of the valuation is not mentioned to the expert. He only receives the necessary information for the valuation in order to identifying the patent and the current patentee. Can the expert carry out an adequate valuation? Without any further information, the expert knows neither the context of his activity nor the context of the valuation. That means that he does not know

1. *Smith/Parr*, Valuation of Intellectual Property and Intangible Assets, 3rd ed. (2000), p. 153.
2. *Anson/Suchy*, Intellectual Property Valuation, 2005, p. 30.

whether he values for example a purchase price for a third party or an investment decision. It makes of course a substantial difference, whether it is to determine the economic value of the patent to be valued which is presently owned by the enterprise, or a potential sales price for a third party enterprise. Besides he does not know which information he can or should consider. It could be solely the available internal information and planning of the owner. It could also be as generally valid as possible aspects that could be valid for each patentee and/or patent buyer. The question whether it would be possible to an expert to carry out an adequate valuation under the given conditions, thus can be answered with a clear no—because under the given circumstances the expert cannot know *what at all can be demanded as adequate in the present case*.

As it is schematically shown in Figure 3.1 the valuator must make different con- 6 versions or illustrations for translating the valuation task requested in reality into a concrete valuation procedure. His achievement is to differentiate between the different contexts and to identify them correctly. As shown in Figure 3.1, the valuator thereby deals with a hierarchical system.

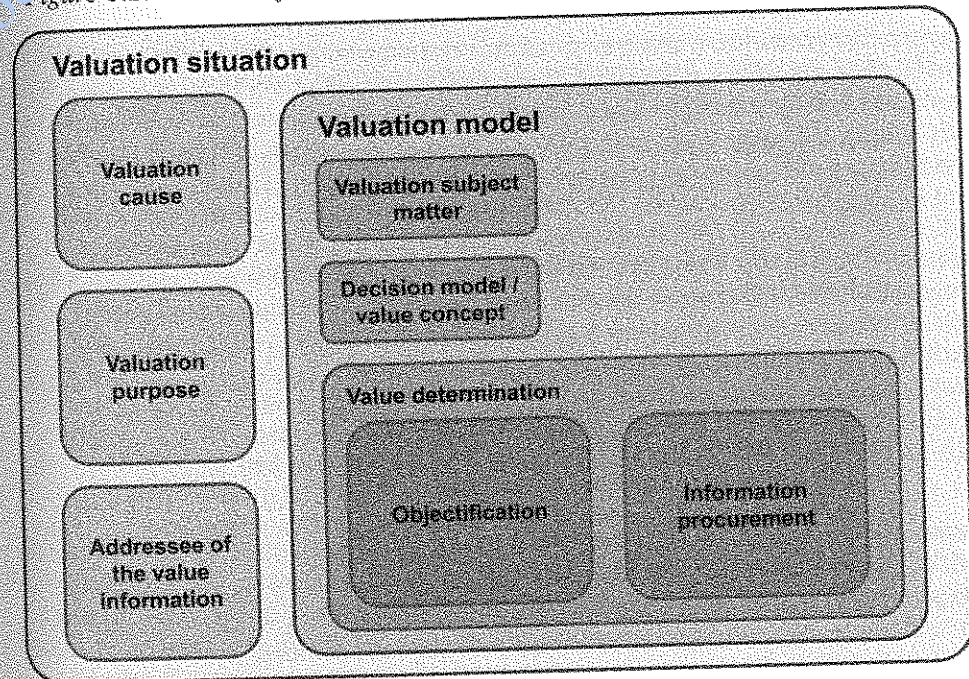
Figure 3.1. In the Execution of a Valuation the Valuator Must Use a Hierarchically Structured System of Transformations from the Reality in His Valuation Proceeding



- 7 On the highest level there is the request for valuation; this must be translated by the analysis of the valuation situation into a proceeding. One level below—thus it is meant that this level depends on the defaults of the level above of the request and/or the situation—is the valuation case. The characteristics of the present valuation case must be considered in the context of the valuation model that is to be developed by the valuator. On the lowest level—that means that for this level both the request for valuation as well as the valuation case are determining and relevant—lies the valuation scenario which supplies the data for the application of a valuation procedure. From this hierarchical structure results the logic of the course of a valuation. First, the valuation situation must be analyzed, *then* the valuation model is structured, and *finally*, a valuation procedure is applied. Only in such a way can it be guaranteed that the mathematical-numeric computation takes place with the help of a valuation procedure in the concrete individual case, in the correct context, and thus, the final result of the valuation is meaningful in the context of the request for valuation. *Pitkethly* summarizes this pre-understanding: “The first questions to be asked of any valuation are: who is doing the valuation? For whom? And for what purpose?”³
- 8 The context of the service provision refers thus to the concrete valuation situation, in which the service of the valuation is rendered. In addition, essentially the following questions are to be clarified:
- What is the valuation cause: For what reason should a valuation be performed at all?
 - Which is the valuation purpose: Which role does the valuator play?
 - Who is the valuation addressee: Who is interested in the valuation result?
- 9 If these questions are answered, the valuator then knows the basic conditions of the valuation, he also knows the context in which his service is to be rendered and he knows the valuation situation. The systematic analysis of the valuation situation is described in detail in Chpt. 3.1.
- 10 The context of the valuation refers to the concrete proceeding in the valuation, thus the application of valuation approaches and procedures. For this, essentially, the following questions are to be clarified:
- Which is the valuation subject matter: Which economic unit generates the value?
 - Which decision is valued: Which value concept fits to the value realization?
 - How the value can be determined: Which valuation approach and which procedure are suitable to the determination?

- To what extent the value must be objectified: How subjectively may the value realization be analyzed?
 - Which information is needed for the valuation?
 - Which measure of quality can be achieved in the given situation with the given information?
- If these questions are answered, the valuator knows the basic conditions of the valuation and he knows the context that he must consider for the valuation model. The systematic structure of a valuation model is described in detail in Chpt. 3.2.
- How the valuation situation as the context of the valuation service and the valuation model for the consideration of the context of the valuation relate to each other is schematically shown in Figure 3.2. The valuation situation forms to a certain extent the outside framework of the valuation. Into this valuation situation is embedded the valuation model which is to be provided. Into this, in turn, the value determination is embedded. Thus, a double framework results from the point of view of the value determination (Sec. 3.2.3). First, the valuation model in which the context of the valuation subject matter is considered, and in addition, the valuation situation in which the context of the valuation service is considered.
- From the appropriate consideration of these two contexts and the associated practical question of the availability and reliability of the existing information

Figure 3.2. Levels of the Consideration of the Context of Patent Valuation



3. *Pitkethly*, The Valuation of Patents: A Review of Patent Valuation Methods with Consideration of Option Based Methods and the Potential for Further Research, Judge Institute Working Paper WP21/97, 1999, p. 3.

results the quality of the valuation. How this can be estimated is described in Chpt. 3.3. Finally, the position and the performance of the valuator are explained in Chpt. 3.4 and the generation of the valuation report in Chpt. 3.5.

3.1 ANALYSIS OF THE VALUATION SITUATION

"If there is any one secret of success, it lies in the ability to get the other person's point of view and see things from that person's angle as well as from your own."

Henry Ford

14 This chapter describes the analysis of the situation in which a patent valuation is to be carried out. An appropriate, in the sense of adequate, patent valuation is not necessarily characterized by special numeric-mathematical accuracy; this is neither practicable nor meaningful with the data available in practice. Rather the valuator must ensure a correct understanding of the situation in which he values, to his own role and to the needs of the addressee of the value information. Otherwise, the danger exists that a valuation will be carried out with high precision that does not fit with the situation. For understanding the valuation situation correctly, the analysis is recommendable by the steps described in this chapter. The fundamental structure of the analysis refers thereby to the different valuation causes as they are shown in Figure 3.5.

15 *The most important arguments in the analysis of the valuation situation are:*

- The valuation situations can be structured and analyzed on the basis of characteristics of the respective valuation cause. Mno. Figure 3.3
- The analysis of the valuation situation can be carried out in four steps. Figure 3.4
- In step 1, the cause of the valuation is specified. The term used for the choice of the cause is less crucial here than rather the character of the real valuation situation. Mno. 22
- In step 2, the purpose of the valuation is specified and in step 3, the goal of the valuation. Here the valuator must identify his role in the valuation situation, and thus also specify the degree of objectification of the valuation result. By objectification, the measure is understood by which the specific individuality of the valuation situation is considered in the determination of the valuation result. Mno. 60

- In step 4, the addressee of the value information is determined. Mno. 78
- With the as complete as possible answer of the central issues to the steps 1-4 for the analysis of the valuation situation an understanding of the basic conditions of the valuation as well as the request for the valuation and the role of the valuator is to be obtained. With this understanding of the valuation situation, it is to be guaranteed that the perception on the following valuation is correct. Figure 3.14

For the practical execution of an adequate patent valuation, it is essential to understand the valuation situation in which an economic patent value is to be determined. By "to understand" is meant here that the valuator knows the basic conditions for his acting. These basic conditions specify the perspective or the perception under which the valuator performs the valuation (Sec. 3.2.3). If a fundamental error is made in the analysis of the valuation situation, this cannot be repaired by a following even sophisticated methodology; it then remains a wrong valuation, fully in the sense of missing a topic. No matter how elaborated the following actions might be, they are not relevant or not suitable for the given cause. The following example is to light up this.

Example:

In a conflict between two partners of an enterprise, a valuation of a patent generated in the enterprise is to take place. The patent is a substantial company value. For the determination of the values of the company shares, a valuation of the patent is necessary. One of the two partners wants to continue the enterprise, the other one would like to leave the enterprise. The two partners agree that the enterprise is to be continued; the technology developed in the enterprise and claimed in the patent in question should be converted by the enterprise into products. The valuation expert consulted was assigned in this case by both partners as a mediator. The valuation cause is one under company law. The value realization takes place in the enterprise; a transfer is not planned. The role of the valuator as a mediator has as a goal an arbitral award value between the two parties. A one-sided view for one of the two partners would not be helpful for anybody. The value information is to avoid a legal dispute. The valuation goal is an actual, objectified 'value in use' of the patent.

It can be directly seen that a deviation in the understanding of the valuation cause (in the example, a cause under company law), of the valuation purpose (in the example, a mediation), of the addressee of the value information (in the example, both addressees are internal) and of the valuation goal (in the example, an